

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WALTER MAY, II, }  
Petitioner, }  
v. } Civil Action No. 04-143 Erie  
LOUIS FOLINO, }  
Respondent. }

**MEMORANDUM ORDER**

This habeas corpus action was received by the Clerk of Court on June 18, 2004, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 12], filed on November 30, 2005, recommended that Petitioner's Petition [Doc. No. 3] be denied and that a certificate of appealability be denied. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Petitioner by certified mail and on Defendant. No objections were filed. After de novo review of the petition and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 15<sup>th</sup> day of December, 2005;

IT IS HEREBY ORDERED that the Plaintiff's Petition [Doc. No. 3] is DENIED and a certificate of appealability is DENIED.

The Report and Recommendation [Doc. No. 12] of Magistrate Judge Baxter, filed on November 30, 2005, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin  
United States District Judge

cm: All parties of record  
Susan Paradise Baxter, U.S. Magistrate Judge